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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,253	04/13/2001	Christopher J. Moulios	70156/138	5020
26371	7590	08/25/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			SELLERS, DANIEL R	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/835,253

Applicant(s)

MOULIOS, CHRISTOPHER J.

Examiner

Daniel R. Sellers

Art Unit

2644

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See the attached paper.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
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***Response to Arguments***

1. Applicant's arguments filed 10 August 2005 have been fully considered but they are not persuasive. The finality of the previous office action is maintained and the following is a response to clarify the teachings of Kraft et al. (Kraft).

Rejections Under 35 U.S.C. 102

2. Regarding the independent claims 1, 11, and 18, Kraft inherently teaches "anchor points." Kraft teaches the method of decomposing a song into one or more tracks, wherein a track has one or more measures, and a measure has one or more notes (Col. 6, lines 46-64). The song is translated to a MIDI format, wherein it is composed of on/off note data, timings, etc. The search for a melody among measures by comparing notes' pitch and duration inherently creates anchor points, wherein the anchor points can be at least among the beginning of a measure or the beginning of a note. It is well known to one skilled in the art of music that the beginning of a song and a melody is defined at the beginning of a measure. Furthermore, it is inherent that a melody needs a reference to be compared to and that the system would have a defined beginning before a comparison is made, wherein the beginning would at least be the start of a note (Col. 7, line 38 – Col. 8, line 18). Kraft further teaches that different measures are compared to each other for variations in the duration and/or pitch, any combination thereof, or even no variation (Col. 8, lines 19-37). It is well known to one skilled in musical arts that some genres would have very little to no variation as compared to the jazz genre, the prime example taught by Kraft.

Kraft also teaches that measures are compared to each other, and in the majority of music the rhythmic meter is steady throughout a piece (i.e. the majority of western music is in 3/4 or 4/4). Therefore, Kraft is comparing "loops" of equal length and there is no mention in the claims when the refining happens, or to which loop is being refined. Kraft, as stated in the office action mailed 6/6/05, teaches the process of refining, and further Kraft refines the length of subsequent melodies in allowing for variations of duration (Col. 11, line 65 – Col. 12, line 15).

#### Rejections Under 35 U.S.C. 103

3. Regarding the claims 4, 7, and 14, as rejected by Kraft, see the preceding argument with respect to the independent claims. Kraft teaches "anchor points", "refining the length", and "comparing the first loop with subsequent loops." As stated above, the anchor points are implicitly taught as the beginning of measures when Kraft teaches the comparison of different measures before and after the current measure, and by a standard English dictionary, Kraft teaches the refining of the length of a melody by searching for variations.

4. Regarding claim 16, as rejected by the combination of Kraft and Marx, Kraft teaches "anchor points", "refining the length", and "comparing the first loop with subsequent loops." See the preceding arguments.